

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CR2010-118085-001 DT

06/07/2011

HONORABLE JOSEPH C. WELTY

CLERK OF THE COURT
K. Johnson
Deputy

STATE OF ARIZONA

THOMAS MCDERMOTT
AARON HARDER

v.

MICHAEL JOHN JAKSCHT (001)

ROBYN GREENBERG VARCOE
JENNIFER L WILLMOTT

VICTIM SERVICES DIV-CA-CCC

TRIAL MINUTE ENTRY
DAY 2

State's Attorney:	Thomas McDermott and Aaron Harder
Defendant's Attorney:	Robyn Varcoe and Jennifer Willmott
Defendant:	Present
Court Reporter:	Lydia Estrada-Gray

10:11 a.m. Trial to a jury continues from June 6, 2011. The jury panel is not present.

Case Agent, Jeffery Schuh, is present and seated behind the State's counsel's table.

Oral arguments are presented on the Defendant's Motion in Limine regarding Improper Expert Testimony.

IT IS ORDERED prohibiting the State from eliciting an opinion from witness Detective Campbell that the Defendant was impaired. Detective Campbell may be permitted to testify that the Defendant exhibited symptoms consistent with central nervous system impairment.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CR2010-118085-001 DT

06/07/2011

IT IS ORDERED absent appropriate foundation, Mr. Musselman is prohibited from testifying that the Defendant's ability to drive was affected by the methamphetamine.

IT IS FURTHER ORDERED precluding the State from eliciting from Dr. Logan his opinion that the Defendant's use of methamphetamine contributed or caused the collision. If the appropriate foundation is laid, the Court will allow the State to elicit Dr. Logan's opinion as set forth on page 6 of the State's Response to the Defendant's Motion in Limine re: Improper Expert Testimony.

The Court has had an opportunity to review the cited cases relating to Defendant's Motion in Limine re: Improper Argument or Comment, item #10.

For the reasons set forth on the record,

IT IS ORDERED that the State may indicate an opinion as to whether or not the Defendant was impaired.

Discussion is held regarding the second tube of blood.

IT IS ORDERED allowing the fact that two tubes of blood were drawn; however, the State and witnesses are precluded from stating that the second tube of blood is drawn for purposes of independent testing.

The Court advises the parties regarding issues related to Jurors 147, 170 and 171.

The Court notes that juror #170 was excused for hardship and the Court inadvertently excused Juror #171 in error.

Both sides announce ready.

10:35 a.m. Jury Panel Group 2 (comprised of prospective jurors #128 through 174, with the exception of the previously excluded jurors) is present.

Juror #147 is interviewed individually and separately by the Court and counsel.

Voir dire examination of Jury Panel Group 2 begins.

Jurors #128, 132, 141, 142 and 153 are interviewed individually and separately by the Court and counsel.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CR2010-118085-001 DT

06/07/2011

Voir dire examination continues.

Counsel approach the bench and discussion is held regarding possible strikes for cause on the record and out of the hearing of the jury.

Jurors #128, 132, 141, 142, and 153 are excused.

Voir dire examination continues.

Juror #169 is interviewed individually and separately by the Court and counsel.

Voir dire examination continues.

Counsel approach the bench and discussion is held regarding possible strikes for cause on the record and out of the hearing of the jury.

Jurors #174 and 149 are excused.

The Court advises Jury Panel Group 2 regarding procedural issues relating to the jury selection process.

12:02 p.m. Jury Panel Group 2 is admonished and is excused from the courtroom, except for Juror #131.

Juror #131 addresses the court, and is excused from the courtroom. Court remains in session.

Discussion is held regarding procedural issues.

12:03 p.m. The court stands at recess.

State's exhibits #408 through 411 are marked for identification.

1:33 p.m. Court reconvenes with the Defendant and respective counsel. Jury Panel Group 2 is not present.

Court reporter, Lydia Estrada-Gray, is present.

Case agent, Jeffery Schuh, is present and seated behind State's counsel's table.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CR2010-118085-001 DT

06/07/2011

The parties approve the Preliminary Jury Instructions.

Discussion is held regarding procedural issues.

Both sides announce ready.

1:36 p.m. Jury Panel Group 2 is present.

Voir dire examination continues.

2:06 p.m. The jury panel is excused. Court remains in session.

Discussion is held regarding procedural issues.

2:08 p.m. The court stands at recess.

LET THE RECORD REFLECT Jury Panel Group 1 and Jury Panel Group 2 (hereinafter referred to as the jury panel) will be combined for purposes of completing voir dire examination and jury selection process.

2:11 p.m. Court reconvenes with the Defendant and respective counsel. The jury panel is not present.

Court reporter, Lydia Estrada-Gray, is present.

Case agent, Jeffery Schuh, is present and seated behind the State's counsel's table.

2:14 p.m. The jury panel is present.

Voir dire examination continues.

Juror #77 is interviewed individually and separately by the Court and counsel.

Voir dire examination continues.

Juror #120 is interviewed individually and separately by the Court and counsel.

Voir dire examination continues.

Juror #11 is interviewed individually and separately by the Court and counsel.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CR2010-118085-001 DT

06/07/2011

Voir dire examination continues.

Counsel approach the bench and discussion is held on the record and out of the hearing of the jury regarding procedural issues.

3:18 p.m. The jury panel is admonished and excused from the courtroom. Court remains in session.

Discussion is held regarding possible strikes for cause.

Juror #93 is stricken for cause.

Juror #21 is stricken for cause and hardship.

The jury panel is passed for cause.

Discussion is held regarding possible strikes for hardship.

Jurors #4, 8, 52, 78 and 155 are stricken for hardship.

3:26 p.m. The court stands at recess while counsel makes their peremptory strikes.

3:45 p.m. Court reconvenes with the Defendant and respective counsel present. The jury panel is not present.

Court reporter, Lydia Estrada-Gray, is present.

Case agent, Jeffery Schuh, is present and seated behind the State's counsel's table.

Counsel for the Defendant raises a Batson issue with respect to the State's strike of juror #31.

The Court addresses the issue with counsel on the record. Based upon the reasons set forth on the record,

THE COURT FINDS that the Defense has sufficiently articulated a prima facie case for the Batson challenge.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CR2010-118085-001 DT

06/07/2011

THE COURT FURTHER FINDS that the State has stated race-neutral reasons for the strike and believes the reasons are reasonable. Therefore,

IT IS ORDERED denying Defendant's request for Batson.

3:49 p.m. The court stands at recess while counsel continue to make their peremptory strikes.

4:22 p.m. Court reconvenes with the Defendant and respective counsel present. The jury panel is not present.

Court Reporter, Lydia Estrada-Gray, is present.

Case agent, Jeffery Schuh, is present and seated behind the State's counsel's table.

Court and counsel review the jury list.

Both sides announce ready.

4:26 p.m. The jury panel is present.

Counsel having exercised their peremptory challenges and the jury list having been stricken, the following 16 persons are duly selected to act as trial juror in this cause: 11, 16, 23, 25, 37, 38, 47, 53, 55, 66, 68, 84, 86, 92, 98 and 100.

Those jurors not called are thanked and excused by the Court.

The jury is sworn and admonished.

4:39 p.m. The jury is excused from the courtroom until 10:30 a.m. on June 8, 2011. Court remains in session.

Discussion is held regarding scheduling and procedural issues.

The parties shall review the State's PowerPoint presentation prior to court reconvening on June 8, 2011, so that any issues can be addressed and resolved at that time.

4:44 p.m. The court stands at recess until **June 8, 2011, at 10:30 a.m.**

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CR2010-118085-001 DT

06/07/2011

This case is eFiling eligible: <http://www.clerkofcourt.maricopa.gov/efiling/default.asp>.
Attorneys are encouraged to review Supreme Court Administrative Orders 2010-117 and 2011-10 to determine their mandatory participation in eFiling through AZTurboCourt.